Exhibit 2

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

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CITY OF ROCKFORD,

Plaintiff,

v.

MALLINCKRODT ARD INC., et al.,

Defendants.

Case No. 3:17-cv-50107

VIDEOTAPED DEPOSITION OF: DR. STEVEN MILLER

SEPTEMBER 15, 2022
9:02 a.m.

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SERIES 17-03-615, a designated series of MSP RECOVERY CLAIMS, SERIES LLC, et al.,

Plaintiffs,

v.

EXPRESS SCRIPTS INC., et al.,

Defendants.

Case No. 3:20-cv-50056

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VIDEOTAPED DEPOSITION OF

DR. STEVEN MILLER, before Alexis A. Jensen, RPR, CRR, and a Certified Court Reporter, at Hilton St. Louis Airport, 10330 Natural Bridge Road, St. Louis, Missouri, on Thursday, September 15, 2022, commencing at approximately 9:02 a.m., pursuant to Notice.

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Also present: Urmila Baumann, Associate Chief Counsel, Express Scripts
Nathan Arndt, Videographer

I N D E X

WITNESS

DR. STEVEN MILLER

EXAMINATION

EXHIBITS:

EXHIBITS CONTINUED:

THE VIDEOGRAPHER: We are now on the record. This is the deposition of Dr. Steve Miller in the matter of City of Rockford versus Mallinckrodt ARD, et al. This deposition is being held at the Hilton St. Louis Airport, 10330 Natural Bridge Road, St. Louis, Missouri.

Today's date is September 15th, 2022, and the time is 9:02 a.m. My name is Nathan Arndt. I'm the videographer. The court reporter is Alexis Jensen.

Counselors, will you please introduce yourselves and affiliations for the record, and the witness will be sworn in.

MR. HAVILAND: This is Don Haviland from Haviland Hughes, Counsel for the City of Rockford and the Class.

MR. FORST: Good morning. Keith Forst with Quinn Emanuel Urquhart -- oh, I'm sorry. I --

MR. HAVILAND: We have other Plaintiffs' Counsel.

MR. FORST: Go ahead. I'm sorry.

MS. HIGGINS: Good morning.

Anna Higgins, from Milberg, on behalf of the MSP Series Plaintiffs.

MR. FORST: And, again, Keith Forst, with Quinn Emanuel Urquhart & Sullivan, on behalf of the witness and Defendants Express Scripts Entities.

MR. BARTIMUS: James Bartimus on behalf of the City of Rockford.

MR. HAMANN: Yes, I'm Matt Hamann --

MR. DEWITT: Anthony DeWitt on behalf of the City of Rockford.

MR. HAVILAND: Oh, we have a crowd. Okay. Anyone else for Rockford?

MR. HAMANN: Anyone else?

MR. HAVILAND: Yeah. Okay.

MR. HAMANN: All right. You also have Matt Hamann, from Quinn Emanuel, on behalf of the Express Scripts Entities.

MS. BAUMANN: Urmila Paranjpe Baumann, Associate Chief Counsel for Litigation, on behalf of the Express Scripts Entities.

MR. HAVILAND: All right. We ready?

Good morning, Dr. Miller.

(Discussion held off the record.)

DR. STEVEN MILLER,

having been called as a witness, being duly sworn, testified as follows:

EXAMINATION

BY MR. HAVILAND:

Q Once again, good morning, Dr. Miller.

A Good morning.

Q My name is Don Haviland, and I'm a -- a lawyer for the City of Rockford in a case that was filed against Mallinckrodt and Express Scripts way back in April of 2017.

I -- you understand you're appearing today to give a deposition, right?

A Correct.

Q Have you ever been deposed before, sir?

A Yes, sir.

Q In the last 10 years?

A No, sir.

Q Okay. In your capacity as an employee of Express Scripts?

A No, sir.

way. We drive better care through adherence. So, we have clinical programs that help assist patients in their care. And so those are the primarily -- primary ways in which we assist patients to get to the right drugs at the lowest costs.

Q What does ESI do to help drive down the cost of prescription drugs?

A So, one of the -- there are -- there's essentially no other entities in the US marketplace that work to drive down the costs of drugs. Initially, our biggest lever was the ability to move people from branded drugs to generic drugs. And so, that was extremely valuable, because generic drugs are often much more inexpensive than the branded product, but equally efficacious.

And then, for the times where there are no generics, if there's competition, there's brands that compete in a category, we can pit them against them, and hopefully get to the lowest price.

Q What about specialty drugs, what are specialty drugs?

A So, specialty drugs is a category of

drugs. Usually, they are very expensive. They usually have special handling requirements. They often are more toxic, and so they're not routinely handled by retail pharmacists. And so, specialty drugs is a class of drugs that represents 2 to 4 percent of dispenses, but are now up to almost 50 percent of the cost of healthcare -- of pharmaceuticals care.

Q Can I get those statistics again? 2 to 4 percent --

A So, 2 to 4 percent of the population uses a specialty medication, depending on the population you're looking at; and it's currently about 50 percent of pharmaceutical spend.

Q That's astounding, isn't it?

A It's very -- yes.

Q And that's grown over time since you started at Express Scripts, right?

A Correct.

Q And it's grown as a function of drugs being called speciality and then moved out of general wholesale distribution?

A That's a minor component to it. It's the innovation that's occurred in pharmaceuticals, so the number of new products that come to the

finish my question, and that way we won't talk over each other, and Alexis here has to get us both down. So, I appreciate your willingness to answer. Let me just reorient the question.

This category called "specialty," that didn't exist when you got out of medical school, did it?

A I don't know.

Q Do you know what makes a drug, special, who determines that it's a specialty drug versus a brand or generic?

A So, the government actually has a definition for specialty drugs, and so for the government, it's any drug that is priced at over $500.

Q Okay. It's based upon price?

A For the government, yeah.

Q What about the commercial marketplace, how is specialty determined?

A So, as we -- as I said previously, we look at specialty drugs as high-priced drugs that often require special handling or instructions or have a big teaching component for the patient or have more toxicities.

Q Okay. You'd agree with me, apart

self-administered drug?
A Correct.
Q So, the graphic here shows that a physician would call in a script -- I'm going to skip over the hub for a moment that's depicted here, but if you could look down to CuraScript SP, you were familiar, back in 2007, that Express Scripts had acquired and then owned a specialty pharmacy by the name of CuraScript Specialty Pharmacy, right?
A Correct.
MR. FORST: Object -- let me just -- wait a beat, so I can get some of these -- I can have a bunch of questions ruled on.
MR. HAVILAND: That's fine.
THE DEPONENT: Sorry.
MR. FORST: So, objection to the form.
But you can answer.
BY MR. HAVILAND:
Q And that entity was in the business of fulfilling prescriptions of specialty medications, right?
A Correct.

Q Now, when you were a practicing physician, you would administer it in the hospital setting, I assume?
A My practice was all university-based.
Q Okay. And if a -- if a mother presented in the hospital and had a child that had infantile spasms, the hospital would administer Acthar to that child in the hospital setting, correct?
A Correct.
MR. FORST: Object -- object to the form.
BY MR. HAVILAND:
Q And you'll see in the graphic there's a hospital box there. It's a circle. And that's directly beneath, CuraScript Specialty Distribution.
Do you see that?
A Correct.
Q Okay. And when you were practicing in the hospital setting, sir, you didn't have to go to CuraScript to get the drug; you'd just go to the hospital dispensary, right?
MR. FORST: Objection, vague, ambiguous, calls for speculation.

the physician talks to about using Acthar to treat that, right?

A Correct.

Q And patients -- or the parents are relying upon the doctor to prescribe the appropriate therapy, correct?

A Correct.

Q And Acthar has treated infantile spasms for 60 years? 70 years?

A It's been in the market since the early '50s.

(Reporter clarification.)

THE DEPONENT: It has been in the market since the early '50s, I believe.

BY MR. HAVILAND:

Q And Acthar is ACTH, right?

A It is an ACTH preparation.

Q Okay. And what do you mean by that?

A So, Acthar is made from the pituitaries of pigs, and so through a proprietary process, they prepare an ACTH-type formula.

Q So, the ACTH, the active ingredient in Acthar, comes from a pig's pituitary gland?

A Correct.

MR. FORST: Objection to the form, lack of foundation.

THE DEPONENT: So, I don't remember the specifics of the conversation.

BY MR. HAVILAND:

Q Okay. You do recall that comment being made, though?

MR. FORST: Objection to the form, asked and answered.

THE DEPONENT: I recall comments that were similar to that, but not -- I don't know the exact comments that were made.

BY MR. HAVILAND:

Q Okay. And what was your takeaway about those comments?

Did you agree that Acthar was not worth what Express Scripts was charging for it?

MR. FORST: Objection to the form, foundation.

THE DEPONENT: So, Acthar has limited utilization. For most of the indications that they're listed for, it is not of much value. There are better drugs. For a couple of indications, it's

But you generally agree there are those two tools that PBMs have?

A Those are the major two, yes. Correct.

Q Okay. And I want to know what you know about the first tool and how Express Scripts, during the time that you've been with Express Scripts, now Cigna, has used that tool in negotiations with pharmaceutical companies to drive lower costs.

A Great.

Q Okay.

A So, there are -- when a drug comes to the market, they're placed in one of three buckets. There are drugs that are called clinical includes. These are drugs that you have to have on a formulary. There's no alternative to them. And so in those particular cases -- and that's about 15 percent of drugs -- we become a price acceptor, because we have no leverage on those drugs.

On the other extreme, there are what are called clinical excludes. These are drugs that are on the marketplace, but have no role in modern therapy. So, these are often older drugs that haven't been withdrawn from the

marketplace. So, I'll give you an example. Aldomet, it's an old anti-hypertensive drug. You have to take it three times a day, it has lots of side effects, and so there is no reason for someone to prescribe Aldomet. Less than 1 percent of drugs fit into that category.

Q Okay.

A 85 percent of drugs are what are called clinically optional, and that is these are drugs where there is -- there could be a competitor to those drugs, we can pit them against each other, and that's where we can get the majority of the savings for patients and plan sponsors, because that's where we can get the pharmaceutical companies to negotiate on price.

Q Where do you fit Acthar in those three buckets?

A So, Acthar, for the majority of its time, has been in the clinical include. It was something you had to have on a formulary.

Q And you say "majority." Has that changed?

A It was changed in I believe 2017 or 2018.

Q '17 or '18, you said?

A Yeah, I'd have to look at the documents.

A Yes.

MR. HAVILAND: All right. Who knows what time it is? Because I don't want to go too long in our first --

MR. FORST: It's been about an hour.

MR. HAVILAND: Just let me finish up with a couple questions, we'll take a break. All right?

BY MR. HAVILAND:

Q Circling back to the -- the two tools that a PBM like Express Scripts uses to drive lower costs, what do you know about what Express Scripts has done to try to drive down the cost of Acthar either with Questcor or Mallinckrodt?

And in answering my question, sir, I -- I don't want to shade into utilization management controls, prior authorization, things like that, because I only want you to focus on that tool, that tool, and how, if at all, to your knowledge, has the PBM used its power to directly negotiate with Mallinckrodt and Questcor to drive down lower costs of Acthar?

MR. FORST: Objection to the form.

Again, you can answer however you best think it needs to be answered.

THE DEPONENT: So when you think about the lever of competitive drugs, being able to compete against another product, because of the designation of clinical include, there -- it means there is no competitive product. We have almost no -- essentially no capability to compete the price down lower.

So, then we can -- and this is -- sort of gets away from your question slightly in that, so then the best tool we have for our clients is utilization management, making sure it's only utilized in the most appropriate circumstances.

And then a third thing that we've done is -- and probably uniquely us, is that we've tried to use the bully pulpit to bring this to light and put pressure on companies.

BY MR. HAVILAND:

Q By that, you mean media exposure and commentary?

A Yep.

foundation, assumes facts not in evidence, calls for speculation.

THE DEPONENT: So, I can tell you specifically for me, knowing there was no competitive products, and that that was not a viable lever, that's why I was very vocal in using the bully pulpit to try to pressure them to lower the price, which may or may not be effective, but that's, in my role, the most effective thing I can do is to make sure, A, we have the appropriate utilization management, and B, that we made it publicly clear that the price was egregious.

BY MR. HAVILAND:

Q Okay. And they're the two other aspects to your answer, when I asked what has Express Scripts done to use its power to negotiate a lower price; utilization management and the bully pulpit in the media.

But I want to know specifically, sir, if you ever said to anyone, Mr. Wentworth, Mr. Neville, Rob Osborne, anyone in the organization, Have we ever gone to the manufacturer and asked for a lower price?

allowed to manufacture in the compounding business.

Q Well, let's break that down.

Acthar is approved for infantile spasms by the FDA, correct?

A Acthar is, yes.

Q Yes. It has a limited approval for acute exacerbations of multiple sclerosis?

A And infantile spasms, correct.

Q Right. Infantile spasms, and it has a secondary approval for acute exacerbations of MS?

A Correct.

Q A flare?

A Correct.

Q Just an incident; it's not a disease-modifying therapy; it only helps to abate the symptoms of the flare, right?

A Correct.

Q You would expect a very limited prescription, one-and-done to abate the symptoms, right?

A Correct.

Q So, it's a -- it's a very narrow indication for multiple sclerosis, right?

A Yes.
Q And as you testified previously, there are 17 or 18 other indications in the label, but they are not FDA-approved, right?
A Correct.
Q They are simply acknowledged as indicated for potential use by the physician community, right?
A That's correct.
Q And that's an important distinction, right? There's FDA-approved, as you're pointing out with this situation with Imprimis, and you have FDA approval for Acthar for IS and acute exacerbations of MS, right?
A Correct.
Q All the other indications are only indicated for use, right?
A And that's why we have utilization management for those.
Q Okay. And that's why, you'd agree with me, the FDA wouldn't take a position in terms of use of a drug outside of its FDA approval?
A I'm not --
Q Well, for a physician that wants to

episodes of -- exacerbations of MS.

Q And the label then just deals with indications and uses for other diseases, right?

A Correct, which is quirky, because we don't see that with many labels.

Q Right. And it's a -- it's a quirkiness of the fact that this is such an old medication, right?

A It was before effectiveness was a requirement of the FDA.

Q Right. The FDA never determined effectiveness of Acthar for any use outside of IS and acute exacerbations of MS?

A That's correct.

Q In fact, the original label had treatment for migraine headaches; did you know that?

A No.

Q It had treatment for delirium tremens by alcoholics; did you know that?

A No.

Q But you are aware the FDA never studied effectiveness of Acthar for any of those other indicated potential uses?

A Until 1962, the FDA didn't look at

almost -- so, we actually, as the FDA, are very cautious when it comes to compounding. The compounding industry has, as you know, had its own problems, but we actually have parts of our business where compounding's important, like infertility.

And so -- but, you know, patients' safety is really important. There's a lot of high-priced drugs. There's a lot of drugs I wish there were alternatives to, but we also have to make sure they're safe products.

BY MR. HAVILAND:

Q Is there no alternative to Acthar today?

A For infantile spasm? Not that I'm aware of in the United States.

Q How about for acute exacerbations of MS?

A There are drugs that work I believe better than Acthar.

Q And what has Express Scripts done to utilize that fact, that there are cheaper better alternatives to acute exacerbations, to

others?
A I suspect I was in my office, but I don't know.
Q And what was your reaction to it?
A You know, like -- you know, Mallinckrodt's behavior was egregious, it's horrible, and, you know, I believe that we were mischaracterized in the story.
Q Okay. What happened after that? Did you raise your concerns about the story with anyone at Express Scripts?
A Obviously, there was a lot of concern going around the entire executive team, and, you know, we had discussions about the -- you know, about the story.
Q Tell me about those that you were privy to.
A You know, I think most of them were how do we -- how do we get our side of the story out there to demonstrate that we've done what we were supposed to do to control the price of the drug, and to make clear to the marketplace that pharmaceutical companies are responsible for the price of their drugs. They set the price, and -- and so making sure that the facts of the

comment -- that's you, Dr. Miller?
A Yes.
Q -- completely, you know, and, Steve, you could chime in here too, but I think Steve and I would both agree, and I think everybody in our company would agree, that the product is vastly overpriced for the value.
Did I read that correctly?
A Yes.
Q He then finally says, I personally told their management team that the drug was hugely overpriced. I know Steve has as well.
Do you see that?
A Yes.
Q Now, they were comments made by Mr. Neville at the conference, right?
A Yes.
Q Now, let's just unpack that before you -- before we go to your comments.
Did you agree, when Mr. Neville said you would likely agree, that it's a pretty poor drug with very limited need?
A That's correct.
Q Okay. You also agreed with his statement that it's hugely overpriced?

C E R T I F I C A T E

I, Alexis A. Jensen, RPR, CRR, a Certified Shorthand Reporter, do hereby certify that prior to the commencement of the examination, DR. STEVEN MILLER was duly sworn by me to testify to the truth, the whole truth, and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the deposition of said witness who was first duly sworn by me on the date and place hereinbefore set forth.

I FURTHER CERTIFY that I am neither attorney nor counsel for, nor related to or employed by, any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed in this action, nor am I financially interested in this case.

_____

Alexis A. Jensen
Notary Public
My Commission Expires 01/31/23

Dated: _____